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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,940	01/22/2002	Richard Ian Walker	PG3736USW	8707

23347 7590 08/25/2003

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EXAMINER

DERAKSHANI, PHILIPPE

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 08/25/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/031,940

Applicant(s)

WALKER, RICHARD IAN

Examiner

PHILIPPE S DERAKSHANI

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,12 and 19-25 is/are rejected.
- 7) ☒ Claim(s) 2,4-11 and 13-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 20 "second wiper" and "second sealing ring" lack proper antecedent basis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 12, 19-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Riebe (WO 99/06303).

Art Unit: 3754

Riebe shows a valve comprising a valve body 1, valve stem 7 and a sealing ring 9 including a wiper (surface for hole in sealing ring).

Claims 1, 3 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Heinzl et al.

Heinzl et al show a valve comprising a valve body 112, valve stem 48 and a sealing ring 60 including a wiper 62.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-20 and 22-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Heinzl et al in view of Riebe (WO 99/06303) .

Heinzl et al lack the stem and seal including a lubricant, the propellant liquefied HFA134a, and a medicament comprising salmeterol xinafoate and fluticasone propionate. Riebe shows an aerosol comprising the stem and seal including a lubricant, the propellant liquefied HFA134a, and a medicament comprising salmeterol xinafoate and fluticasone propionate to dispense medicaments. It would have been obvious to one of ordinary skill in the art to have modified the Heinzl et al aerosol with the stem and seal including a lubricant, the propellant liquefied HFA134a, and a medicament comprising salmeterol xinafoate and fluticasone propionate as taught by Riebe to dispense a medicament.

***Allowable Subject Matter***

Claims 2, 4-11, 13-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beard et al was cited to show another example of an aerosol valve.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIPPE S DERAESHANI whose telephone number is 703-308-0264. The examiner can normally be reached on 8 hour days.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MANCENE GENE can be reached on 703-308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7766 for regular communications and 703-308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

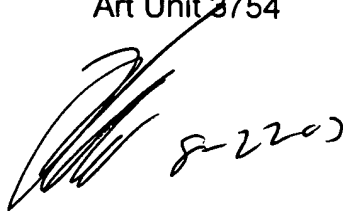
Application/Control Number: 10/031,940

Page 5

Art Unit: 3754

PHILIPPE S DERAQSHANI  
Primary Examiner  
Art Unit 3754

PD  
August 22, 2003

A handwritten signature in black ink, appearing to read "P. S. Deraqshani", followed by the date "8-22-03".